WILLS—VESTED OR CONTINGENT ESTATES—"PAY OVER" RULE.—FULTON TRUST CO. OF NEW YORK v. PHILLIPS ET AL., 150 N. Y. SUPP. 335.—Under a will setting apart a moiety of an estate, and bequeathing the income thereof to A, with direction to "pay over" the same to the children of A after her decease and until their majority, and then to "pay over" to them the principal, *held,* that the children of A acquired vested and not contingent interests, and their legal representatives were entitled to their portions, in the event of their death prior to that of A. Dowling and Scott, JJ., *dissenting.*

By the "pay over" rule of interpretation, where the only donative words in a will are contained in a direction to pay over a certain interest to the legatee at a future time, the presumption is in favor of a contingent and not a vested interest. *In re Blake,* 157 Cal. 448. In the case of a beneficiary not ascertained at the time of the bequest, this presumption is at its strongest. *Seibert's Appeal,* 19 Pa. St. 49. The absence of words indicating a present vesting of interest is presupposed in any application of the rule. *Furmen v. Fox,* 1 Cush. (Mass.) 134. No question arises where the postponement in time is expressly applied to the grant, and not merely to the payment. *Hardy v. Hardy,* 174 Mass. 268. The presumption has been regarded as strengthened by a provision for the substitution of a second beneficiary in case of the death of the first prior to the time of distribution. *Clark v. Cammann,* 160 N. Y. 315. This, however, may at least equally well be construed as vesting a remainder subject to a condition subsequent. *VanDyke v. Vanderpool,* 14 N. J. Eq. 198; *Crapo v. Price,* 190 Mass. 317. Where the testator explicitly prescribes the manner in which the executor is to make the distribution and determine the beneficiaries, additional weight is given to the "pay over" presumption. *Jones v. Massey,* 9 S. C. 376; *Platt v. Platt,* 42 Conn. 330. So, too, in case of the insertion of a *habendum* clause relating directly and exclusively to the "pay over" direction. *In re Blake, supra.* The presumption loses its force when the postponement is merely for convenience in settling the estate. *Bowditch v. Ayrault,* 138 N. Y. 222; *Crane v. Bolles,* 49 N. J. Eq. 373. Similarly, when the postponement is merely for the purpose of letting in an intermediary estate. *Angus v. Noble,* 73 Conn. 57; *VanDyke v. Vanderpool, supra.* The presumption is weakened when the direction is incorporated into the residuary clause, the purpose of which is to avoid a partial intestacy. *Armstrong v. Barber,* 239 Ill. 389. So also when the remainder is to the testator's own children. *Gibbens v. Gibbens,* 140 Mass. 102. The same is true when the disposition involves the present severance of a moiety, the interest thereof being devoted to those who are eventually to have the principal. *Warren v. Durant,* 76 N. Y. 136. Cf. *Smith v. Edwards,* 88 N. Y. 92. The principal case represents a reasonable extension of the consideration last named, to apply where the principal and interest are to go, not to the same individual, but to a single family branch.